

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel Jesus Cordova,

Petitioner,

vs.

Dora B. Schriro, et al.,

Respondents.

No. CV 08-438-TUC-FRZ

ORDER

Petitioner Manuel Cordova, an inmate at the Arizona State Prison Complex in Kingman, Arizona, filed a Petition for Writ of Habeas Corpus challenging the aggravated sentence he received after pleading guilty to manslaughter, claiming (1) his sentence is excessive in violation of the Eighth Amendment and (2) his right to due process was violated when the trial judge allegedly double-counted his gang affiliation as an aggravating factor. Contesting the Petition, the Government argues that the claims are procedurally defaulted because they were not raised as federal issues with the state courts and, in the alternative, that the claims fail on the merits because 17 years for manslaughter is not excessive and that the trial judge was permitted to use the gang affiliation as an aggravating factor.

This matter was referred to United States Magistrate Judge Charles R. Pyle for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules of Practice of the United States District Court for the District of Arizona, Local Rules of Civil Procedure.

1 Magistrate Judge Pyle issued his Report and Recommendation on April 1, 2010,
2 setting forth the factual and procedural background of the underlying case.

3 The Report and Recommendation recommends that the District Court, after its
4 independent review of the record and all matters submitted, enter its order dismissing
5 Petitioner's Petition for Writ of Habeas Corpus based on procedural default.

6 Notwithstanding the finding of procedural default, the Magistrate Judge alternatively
7 recommends the petition be denied on the merits, providing a thorough analysis of the issues
8 presented.

9 The parties were given notice that, pursuant to 28 U.S.C. §636(b) and Rules 72(b) and
10 6(a) of the Federal Rules of Civil Procedure, that any party may serve and file written
11 objections within fourteen (14) days of being served with a copy of the Report and
12 Recommendation.

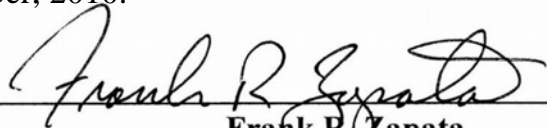
13 No objections were filed, however, Petitioner filed an "Affidavit of: Manuel J.
14 Cordova; In support of First and Second Supplemental legal Authority Motions in Support
15 of Writ of Habeas Corpus, 28 U.S.C. § 2254(d)" on April 14, 2010.

16 The Court, having made an independent review of the record herein, including review
17 and consideration of Petitioner's affidavit filed subsequent to the Report and
18 Recommendation, orders as follows:

19 **IT IS ORDERED** that the Report and Recommendation [Doc.19] is hereby
20 **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions of law by this Court;

21 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is
22 **DENIED** and that is case is hereby dismissed with prejudice; Judgment shall be entered
23 accordingly.

24
25 DATED this 23rd day of September, 2010.

26 
27 **Frank R. Zapata**
28 **Senior United States District Judge**